

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Atlantic Beach Radio, Inc.)	File Number EB-02-AT-071
Licensee of Radio Station WMIR(AM),)	NAL/Acct. No.200232480007
Atlantic Beach, SC)	FRN 0006-1248-87

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 24, 2002

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find that Atlantic Beach Radio, Inc. ("Atlantic"), licensee of Radio Station WMIR(AM), Atlantic Beach, South Carolina, willfully and repeatedly violated Sections 11.35 and 73.1745 of the Commission's Rules ("Rules"),¹ by failing to maintain operational Emergency Alert System ("EAS") equipment and by operating with excessive power at night in violation of the terms of station authorization. We find Atlantic Beach Radio, Inc. apparently liable for forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. On May 6 and 7, 2002, an agent of the FCC Enforcement Bureau's Atlanta Office ("Atlanta Office") monitored WMIR(AM)'s signal from before sunset, through sundown, and into the nighttime hours. The agent conducted field strength measurements of the station's signal during this time period and determined that WMIR(AM) failed to reduce power to its licensed nighttime power of 11 watts at sunset, 8:15 p.m. eastern daylight savings time and remained on daytime power (6.5 kilowatts) throughout nighttime hours.

3. On May 8, 2002, the agent inspected the EAS system of WMIR(AM). The inspection was conducted with Mr. Reggie Dyson, Station Manager. Mr. Dyson showed the agent a Gorman Redlich EAS encoder/decoder in the studio, however the equipment was not hooked up and there were no receivers connected to the unit. There were no EAS logs to demonstrate that the EAS unit had recently been taken out of service for repairs or any other evidence that the EAS unit had ever been installed and operational. Mr. Dyson said that the station had been sharing an EAS unit with the station WKVC(FM), North Myrtle Beach, SC, with studios located in the same building. Mr. Dyson had no logs to corroborate

¹ 47 C.F.R §§ 11.35 and 73.1745.

his statements.

4. Still on May 8, 2002, during the same inspection, the agent notified Mr. Dyson that he observed that the station did not reduce power on the evenings of May 6 and 7, 2002. Mr. Dyson stated that the transmitter was on a timer and that the transmitter should have powered down to nighttime power automatically. Mr. Dyson stated that the station engineer was out of town, however, he would make sure he was notified and get instructions on how to reduce the station's power.

5. Still on the evening of May 8, 2002, the agent conducted field strength measurements and determined that, although the station had reduced power at local sunset, the station's power level far exceeded the 11 watts nighttime power that the station was authorized.

6. During the week of May 15 through 21, 2002, the agent held telephone conversations with WMIR(AM)'s station engineer. The engineer stated that WMIR(AM) shared a Sage EAS unit with another station, WKVC(FM), located in the same building. He said that the Sage unit was removed from the WKVC(FM) studio about a month prior to the agent's inspection and the unconnected Gorman Redlich EAS unit the agent found in WMIR(AM)'s studio was purchased at that time.

7. During the same telephone conversations, the engineer stated that he discovered that the automatic control unit used to power down the station at sunset had been damaged resulting in the station's failure to reduce power on the evenings of May 6 and 7, 2002 and remaining on full daytime power. He also stated that the failure to fully reduce power on the evening of May 8, 2002 was due to operator error.

III. DISCUSSION

8. Section 11.35 of the Rules requires that broadcast stations maintain operational EAS encoders, decoders and attention signal generating equipment and receiving equipment so that monitoring and transmitting functions are available during times the stations are in operation. On May 8, 2002, the Gorman Redlich EAS unit at the WMIR(AM)'s studio was not operational and there were no EAS logs to demonstrate that the station had ever had operational EAS equipment or that the EAS equipment had been taken out of service for repair.² Atlantic admitted that the station had purchased, but not installed, EAS equipment about one month prior to the inspection.

9. Section 11.51(j) of the Rules states that "[b]roadcast stations, and cable systems and wireless cable systems that are co-owned and co-located with a combined studio or control facility, (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS transmitting requirements contained in this section for the combined stations or cable systems or wireless cable systems with one EAS Encoder." Although the station manager and engineer stated that WMIR(AM) had shared a Sage EAS unit with WKVC(FM) up to a month prior to inspection, Commission records indicate that the stations are not co-owned and are not licensed to the same community. Moreover, there was no evidence that the stations had a combined studio or control facility and

² See 47 C.F.R. §§ 11.35(a)-(b).

there were no logs to demonstrate that WMIR(AM) had ever sent or received an EAS test or alert.

10. Section 73.1745 of the Rules states that “[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part.” WMIR(AM) failed to reduce power to nighttime power and remained on full daytime power on the evenings of May 6 and 7, 2002. Still, on May 8, 2002, after being verbally warned about the failure to reduce power the previous two evenings, the station reduced power to an intermediate power level, but it never fully reduced power to the licensed power of 11 watts. Although the failure to reduce power on two evenings was reportedly due to equipment failure and then on the third evening operator error, it is still the responsibility of licensees to ensure proper station operation. It is also the licensee responsibility to establish monitoring procedures, routinely inspect any automatic transmission control equipment, train operating personnel to properly make transmitter adjustments and maintain pertinent station logs.³

11. Based on the evidence before us, we find that Atlantic Beach Radio, Inc. willfully⁴ violated Sections 11.35 and 73.1745 of the Rules by failing to maintain operational EAS equipment and by operating with excessive power during nighttime hours in violation of the terms of station authorization. These violations are repeated⁵ in that they occurred on more than one day.

12. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amount for failure to maintain operational EAS equipment is \$8,000, and for operation with excessive power is \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Considering the entire record and applying the factors listed above, this case warrants a \$12,000 forfeiture.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Atlantic Beach Radio, Inc. is hereby NOTIFIED of its APPARENT

³ See 47 C.F.R. §§ 73.1350 and 73.1400.

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ The term “repeated” means the commission or omission of an act more than once or, if such commission or omission is continuous, for more than one day. 47 U.S.C. § 312(f)(2).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000) for willful and repeated violation of Sections 11.35 and 73.1745 of the Rules, by failing to maintain operational EAS equipment and failing to reduce power to nighttime power in violation of the terms of station authorization.

14. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this *Notice Of Apparent Liability*, Atlantic Beach Radio, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *Notice of Apparent Liability* under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

16. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. IT IS FURTHER ORDERED THAT a copy of this *Notice Of Apparent Liability* shall be sent by regular mail and Certified Mail Return Receipt Requested to Atlantic Beach Radio, Inc., c/o Putbrese, Hunsaker & Trent, P.O. Box 217, Sterling, VA 20167.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director
Atlanta Office

¹⁰ See 47 C.F.R. § 1.1914.